

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TITAN INDEMNITY COMPANY,

Plaintiff,

No. C 14-03864 WHA

v.

A PLUS TOWING, a General Partnership,  
JOSE HERMOSILLO, individually and dba  
A PLUS TOWING, FERNANDO  
HERMOSILLO, individually and dba A PLUS  
TOWING, A PLUS TOWING, a business  
organization form unknown, and KATRINA  
RAPP, an individual, and DOES 1–10,

Defendants.

**NOTICE REGARDING  
DEFAULT AND  
DEFAULT JUDGMENT**

Now that a default has been recorded against a defendant herein, this notice provides guidance to counsel regarding the next step of default judgment.

1. All defendants against whom default and default judgment are sought should have been properly served with the summons and operative complaint. Proof of service, signed under oath, should be filed in the record. Please make sure that this has been done. As a courtesy and to provide yet further notice, defendants should be promptly mailed (or personally served with) a copy of the motion for a default judgment. If there is a genuine dispute or doubt as to service of the summons and operative complaint, an evidentiary hearing may be set.

2. The operative complaint must state a claim for relief in order for a default judgment to be enforced. *Trans World Airlines, Inc. v. Hughes*, 449 F.2d 51, 55, 61–70 (2d Cir. 1971), *reversed by Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363, 389 (1973).

1 No relief will be provided for inadequately-pled claims. Necessary facts outside of the pleading  
2 are *not* established by default and may not be added in by supplemental declaration. A common  
3 mistake is to assume that the scope of offending conduct can be fleshed out with supplemental  
4 declarations. Not so. The scope of offending conduct is limited to the well-pled allegations in  
5 the operative complaint served on the defaulting defendant, for this is the pleading to which the  
6 recipient had to decide whether to appear and defend versus concede by default. In other  
7 words, before a motion for a default judgment is filed, a plaintiff should make sure the operative  
8 complaint served on the defaulting defendant provides all of the allegations necessary. *Alan*  
9 *Neuman Productions., Inc. v. Albright*, 862 F.2d 1388, 1393 (9th Cir. 1988), *cert. denied*, 493  
10 U.S. 858 (1989).

11 4. Once default judgment is entered, the undersigned judge will invite declarations  
12 as to damages flowing from the well-pled allegations in the operative complaint and in some  
13 instances will hold a prove-up evidentiary hearing to establish damages, if any. *See* FRCP  
14 55(b)(2). Plaintiff should file all of the declarations and relevant documents necessary to show  
15 the damages sought. The motion should explain with specificity the damages flowing from  
16 (and only from) the well-pled allegations in the complaint. Please be reasonable. General  
17 unspecified damage claims will not be sufficient. *Eitel v. McCool*, 782 F.2d 1470, 1471–72  
18 (9th Cir. 1986).

19 5. Once judgment is entered, a new lawsuit against the same defendant by the same  
20 plaintiff based on the same transaction and occurrence will be barred by *res judicata*.

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23 Dated: February 11, 2015.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE